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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,653	08/20/2003	Toby Freyman	10177-169	8819
20583	7590	12/12/2007		
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			EXAMINER WITCZAK, CATHERINE	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 12/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

2/10/02

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/2007 has been entered.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 25-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al (US 5,713,853) as modified by Ding et al (US 6,364,856)

Claims 24, 25, 26, 27, and 40: Clark et al disclose in Figures 24-26 a medical device comprising a shaft (702); an initially cylindrically shaped delivery member (706); a therapeutic agent delivery lumen (710) connected to a therapeutic agent source; a retention member (704); and a therapeutic agent source being a syringe which is capable of applying negative pressure.

Clark et al disclose the claimed invention except for the delivery member being shaped in a continuous solid cylindrical configuration. Ding et al teach in Figures 2 and 3 that it is known to use a delivery member having a continuous solid cylindrical shape. It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to modify the device of Clark et al with a continuously solid delivery member, since such a structure would ensure maximum contact with the treatment area when the delivery member is in its expanded state.

Claims 28 and 29: Clark et al disclose in column 7, line 18-column 8, line 47 the delivery member being formed of a porous, degradable material.

Claims 30 and 31: Clark et al disclose in Figure 24 the delivery member configured to conform to the internal contour of the target body lumen when expanded.

Claims 32, 33, 34 and 35: Clark et al disclose in Figure 25 the proximal and distal ends of the delivery member being tapered end caps.

Claim 36: Clark et al disclose in column 14, line 2-4 the delivery member having a length between 5mm and 40 mm.

Claims 37, 38 and 39: Clark et al disclose in Figure 25 the shaft having a wire lumen for receiving a guidewire which extends into the delivery member.

### *Response to Arguments*

Applicant's arguments with respect to claims 25-40 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

